It is clear, however, that good faith as used in the Act, not only requires honesty of intention but also that a purchaser must not know, have reason to know, or have knowledge of circumstances which ought to put him on inquiry that the goods in question were produced in violation of any of the provisions of the Act referred to in sections 12(a) and 15(a)(1).

These good faith provisions are reinforced by the requirement in sections 12(a) and 15(a)(1) that the purchaser must also acquire his goods "for value without notice" of an applicable violation of the Act.

To illustrate the application of the above principles, let us assume that a purchaser of goods for value acquires them in reliance upon a written assurance from the producer, manufacturer, or dealer that the particular goods were produced in compliance with all applicable requirements of the Act, and that the form and content of the assurance is sufficient to meet the conditions of sections 12 and 15(a)(1) of the Act. If a reasonable, prudent man in the purchaser's position, acting with the diligence, would have no reason to question the truth of the assurance that the applicable requirements has been complied with, the purchaser's reliance on such written assurance would be considered to be in good faith and without notice of any violation, and the purchaser would be protected in the event that violations of the child-labor or the wage-hour standards of the Act had actually occurred in the production of such goods by the vendor or by prior producers of the goods. In such circumstances, the purchaser's protection would not be contingent on his securing separate written assurances from the prior producers or on his assuring himself that his vendor had secured specific guarantees from them with respect to compliance.

PART 790—GENERAL STATEMENT AS TO THE EFFECT OF THE PORTAL-TO-PORTAL ACT OF 1947 ON THE FAIR LABOR STANDARDS ACT OF 1938

GENERAL

Sec.

AUTHORITY: 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*

SOURCE: 12 FR 7655, Nov. 18, 1947, unless otherwise noted.

GENERAL

§ 790.1 Introductory statement.

(a) The Portal-to-Portal Act of 1947 was approved May 4, 1947.[1] It contains provisions which, in certain circumstances, affect the rights and liabilities of employees and employers

[1] An act to relieve employers from certain liabilities and punishments under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act, and for other purposes (61 Stat. 84; 29 U.S.C., Sup., 251 *et seq.*).

with regard to alleged underpayments of minimum or overtime wages under the provisions of the Fair Labor Standards Act of 1938,[2] the Walsh-Healey Public Contracts Act, and the Bacon-Davis Act. The Portal Act also establishes time limitations for the bringing of certain actions under these three Acts, limits the jurisdiction of the courts with respect to certain claims, and in other respects affects employee suits and proceedings under these Acts.

For the sake of brevity, this Act is referred to in the following discussion as the Portal Act.

(b) It is the purpose of this part to outline and explain the major provisions of the Portal Act as they affect the application to employers and employees of the provisions of the Fair Labor Standards Act. The effect of the Portal Act in relation to the Walsh-Healey Act and the Bacon-Davis Act is not within the scope of this part, and is not discussed herein. Many of the provisions of the Portal Act do not apply to claims or liabilities arising out of activities engaged in after the enactment of the Act. These provisions are not discussed at length in this part,[3] because the primary purpose of this part is to indicate the effect of the Portal Act upon the future administration and enforcement of the Fair Labor Standards Act, with which the Administrator of the Wage and Hour Division is charged under the law. The discussion of the Portal Act in this part is therefore directed principally to those provisions that have to do with the application of the Fair Labor Standards Act on or after May 14, 1947.

(c) The correctness of an interpretation of the Portal Act, like the correctness of an interpretation of the Fair Labor Standards Act, can be determined finally and authoritatively only by the courts. It is necessary, however, for the Administrator to reach informed conclusions as to the meaning of the law in order to enable him to carry out his statutory duties of administration and enforcement. It would seem desirable also that he makes these conclusions known to persons affected by the law.[4] Accordingly, as in the case of the interpretative bulletins previously issued on various provisions of the Fair Labor Standards Act, the interpretations set forth herein are intended to indicate the construction of the law which the Administration believes to be correct[5] and which will guide him in the performance of his administrative duties under the Fair Labor Standards Act, unless and until he is directed otherwise by authoritative rulings of the courts or concludes, upon reexamination of an interpretation, that it is incorrect. As the Supreme Court has pointed out, such interpretations provide a practical guide to employers and employees as to how the office representing the public interest in[6] enforcement of the law will seek to apply it. As has been the case in the past with respect to other interpretative bulletins, the Administrator will receive and consider statements

[2] 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.* In the Fair Labor Standards Act, the Congress exercised its power over interstate commerce to establish basic standards with respect to minimum and overtime wages and to bar from interstate commerce goods in the production of which these standards were not observed. For the nature of liabilities under this Act, see footnote 17.

[3] Sections 790.23 through 790.29 in the prior edition of this part 790 have been omitted in this revision because of their obsolescence in that they dealt with those sections of the Act concerning activities prior to May 14, 1947, the effective date of the Portal-to-Portal Act.

[4] See *Skidmore* v. *Swift & Co.,* 323 U.S. 134; *Kirschbaum Co.* v. *Walling,* 316 U.S. 517; Portal-to-Portal Act, sec. 10.

[5] The interpretations expressed herein are based on studies of the intent, purpose, and interrelationship of the Fair Labor Standards Act and the Portal Act as evidenced by their language and legislative history, as well as on decisions of the courts establishing legal principles believed to be applicable in interpreting the two Acts. These interpretations have been adopted by the Administrator after due consideration of relevant knowledge and experience gained in the administration of the Fair Labor Standards Act of 1938 and after consultation with the Solicitor of Labor.

[6] *Skidmore* v. *Swift & Co.,* 323 U.S. 134. See also *Roland Electrical Co.* v. *Walling,* 326 U.S. 657; *United States* v. *American Trucking Assn.,* 310 U.S. 534; *Overnight Motor Transp. Co.* v. *Missel,* 316 U.S. 572.

suggesting change of any interpretation contained in this part.

[12 FR 7655, Nov. 18, 1947, as amended at 35 FR 7383, May 12, 1970]

§ 790.2 Interrelationship of the two acts.

(a) The effect on the Fair Labor Standards Act of the various provisions of the Portal Act must necessarily be determined by viewing the two acts as interelated parts of the entire statutory scheme for the establishment of basic fair labor standards.[7] The Portal Act contemplates that employers will be relieved, in certain circumstances, from liabilities or punishments to which they might otherwise be subject under the Fair Labor Standards Act.[8] But the act makes no express change in the national policy, declared by Congress in section 2 of the Fair Labor Standards Act, of eliminating labor conditions "detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." The legislative history indicates that the Portal Act was not intended to change this general policy.[9] The Congressional declaration of policy in section 1 of the Portal Act is explicitly directed to the meeting of the existing emergency and the correction, both retroactively and prospectively, of existing evils referred to therein.[10] Sponsors of the legislation in both Houses of Congress asserted that it "in no way repeals the minimum wage requirements and the overtime compensation requirements of the Fair Labor Standards Act"[11] that it "protects the legitimate claims" under that Act,[12] and that one of the objectives of the sponsors was to "preserve to the worker the rights he has gained under the Fair Labor Standards Act."[13] It would therefore appear that the Congress did not intend by the Portal Act to change the general rule that the remedial provisions of the Fair Labor Standards Act are to be given a liberal interpretation[14] and exemptions therefrom are to be narrowly construed and limited to those who can meet the burden of showing that they come "plainly and unmistakably within (the) terms and spirit" of such an exemption.[15]

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[7] As appears more fully in the following sections of this part, the several provisions of the Portal Act relate, in pertinent part, to actions, causes of action, liabilities, or punishments based on the nonpayment by employers to their employees of minimum or overtime wages under the provision of the Fair Labor Standards Act. Section 13 of the Portal Act provides that the terms, "employer," "employee," and "wage", when used in the Portal Act, in relation to the Fair Labor Standards Act, have the same meaning as when used in the latter Act.

[8] Portal Act, sections 1, 2, 4, 6, 9, 10, 11, 12. Sponsors of the legislation asserted that the provisions of the Portal Act do not deprive any person of a contract right or other right which he may have under the common law or under a State statute. See colloquy between Senators Donnell, Hatch and Ferguson, 93 Cong. Rec. 2098; colloquy between Senators Donnell and Ferguson, 93 Cong. Rec. 2127; statement of Representative Gwynne, 93 Cong. Rec. 1557.

[9] See references to this policy at page 5 of the Senate Committee Report on the bill (Senate Rept. 48, 80th Cong., 1st sess.), and in statement of Senator Donnell, 93 Cong. Rec. 2177; see also statement of Senator Morse, 93 Cong. Rec. 2274; statement of Representative Walter, 93 Cong. Rec. 4389.

[10] Cf. House Rept. No. 71; Senate Rept. No. 48; House (Conf.) Rept. No. 326, 80th Cong., 1st sess. (referred to hereafter as House Report, Senate Report, and Conference Report); statement of Representative Michener, 93 Cong. Rec. 4390; statement of Senator Wiley, 93 Cong. Rec. 4269, 4270; statement of Representative Gwynne, 93 Cong. Rec. 1572; statements of Senator Donnell, 93 Cong. Rec. 2133–2135, 2176–2178; statement of Representative Robison, 93 Cong. Rec. 1499; Message of the President to Congress, May 14, 1947 on approval of the Act (93 Cong. Rec. 5281).

[11] Statements of Senator Wiley, explaining the conference agreement to the Senate, 93 Cong. Rec. 4269 and 4371. See also statement of Senator Cooper, 93 Cong. Rec. 2295; statement of Representative Robsion, 93 Cong. Rec. 1499, 1500.

[12] Statement of Representative Michener, explaining the conference agreement to the House of Representatives, 93 Cong. Rec. 4391. See also statement of Representative Keating, 93 Cong. Rec. 1512.

[13] Statement of Senator Cooper, 93 Cong. Rec. 2300; see also statements of Senator Donnell, 93 Cong. Rec. 2361, 2362, 2364; statements of Representatives Walter and Robsion, 93 Cong. Rec. 1496, 1498.

[14] *Roland Electrical Co.* v. *Walling,* 326 U.S. 657; *United States* v. *Rosenwasser,* 323 U.S. 360; *Brooklyn Savings Bank* v. *O'Neil,* 324 U.S. 697.

[15] See *Phillips Co.* v. *Walling,* 324 U.S. 490; *Walling* v. *General Industries Co.,* 330 U.S. 545.